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Title: Personal explanation by Shri Ram Jethmalani, The Minister of Urban Affairs and Employment regarding National Judicial Commission for appointment of judges of High Courts and Supreme Court.

14.59 hrs

MR. CHAIRMAN Now the hon. Minister may give a personal explanation.

THE MINISTER OF URBAN AFFAIRS AND EMPLOYMENT (SHRI RAM JETHMALANI): Mr. Chairman, Sir, I am very grateful to you for giving me this opportunity for making a personal explanation on a controversy which was raised during `Zero Hour'. It is very unfortunate to state that though I was present here, yet at around 1.30 p.m., that is, a couple of minutes after I left, a point was raised.

15.00 hrs.

Sir, the National Agenda for Governance to which the present Government is fully committed in the 23rd paragraph solemnly promises that `we will set up a National Judicial Commission, which will recommend judicial appointments in the High Courts and the Supreme Court and draw up a report of ethics for the judiciary.' The background of this proposal is well known. The earlier constitutional interpretation that the Executive was paramount in the decision-making process relating to appointments and transfers, was inconsistent with judicial independence and produced deadlock. The new interpretation vesting paramount powers in the judicial branch, that is, the judicial family itself, has also failed of its purpose. Questionable appointments have seeped through the hole in this process as well. General opinions in the country, have therefore, veered round to a third alternative, namely, the Judicial Commission composed of all relevant elements including the Leader of the Opposition which will have exclusive powers of appointments and transfers as well as removal. The impracticable procedure of impeachment will be displaced.

Sir, every judge and practitioner at the Bar has come to know that there is currently a deadlock in judicial appointments even though judicial appointments are urgently required to be made. Everybody knows that some extremely worthy appointments are held up because they are presented as a part of a package in which some questionable appointments are mixed up. It is equally well known that the consultation procedure laid down by the Supreme Court itself to which even the learned present Chief Justice is a party, is not being properly followed.

Sir, I may tell this hon. House and take it into confidence, it is a matter of great importance, that even on the present process which is currently in operation, at least, five or six serious disputes have arisen. Question is whether the consultation by the Chief Justice should be with only two judges or should be with the five senior-most judges of his own Court. The second is whether matters regarding which the Government has some reservations, should be considered by the Chief Justice alone or along with other two or five Judges. Thirdly, whether the Government is entitled to know the views of the other judges which are to be transmitted by the Chief Justice along with his views, whether these are two or five for. Fourthly, whether consultation by the Chief Justice of India with two senior-most is necessary in respect of the transfer of Chief Justices or judges in keeping with the principle of collective opinion.

Sir, these question have to be decided. What happened was that I came to know sometime last week and this was confirmed by the learned Attorney-General on the night of the 17th when I happened to meet him that a public interest litigation has already been filed in the Supreme Court by a lawyer by the name of Mr. Gupta in which he seeks the relief of mandamusing the Government to make all appointments as recommended by the Chief Justice of India. Obviously, this matter is now sub judice. The hearing is fixed for the 28th of this month and I am quite sure that the Attorney-General and other lawyers will appear and make their submissions to the court and the Supreme Court either in the Two-Judge Bench which has been constituted or maybe a larger Bench in view of the constitutional importance of these grave questions, will decide that issue.

Sir, on behalf of the Government, I wish to make it clear that the Government respects the Constitution. The Government respects the current constitutional interpretations put by the Supreme Court itself in the decision of four or five years ago, known as the Supreme Court Advocate Association Interrupt unless that decision is reversed by a Constitutional Amendment creating a National Judicial Commission or by some other methods.

Ultimately, when the consultative process is fully satisfied even according to the current procedure, the Government will be totally bound by the respectful opinion of the judiciary itself. But Sir, I wish to say and this was a subject matter of comment that `why did Mr. Jethmalani speak?'. I was delivering a Key-Note Address at an organisation of the Lawyers of India organised by the Bar Council of India, and Sir, I have not lost my right to even impress upon my own Government that in our National Agenda to which we are publicly committed, we have placed ourselves to creating of a National Judicial Commission.

In view of some of the deficiencies that have come to light now, my Government should take steps on a priority basis to implement that part of the agenda. Ultimately if the Government cannot implement its own agenda, the Government has to come back to this House and seek a two-thirds majority. If it gets it with your concurrence and with your cooperation, the Government will proceed in accordance with the wishes of both Houses of Parliament. The Government is not going to act in an arbitrary manner, as indeed it cannot.

So, what I said at this Conference was what I have been pleading for in my public life even long before I became a Minister. The Minister's role is not to speak inconsistently with the Cabinet decision upon the point. The Cabinet has taken no view upon this particular matter. If and when it does, I will have to put myself in conformity with the Cabinet decision. But until then my convictions and my conscience of many years ago remains in tact and I have the right under the Constitution to express my views and even impress my views upon the Government of the day. That is precisely what I did at this Conference of Lawyers. Unless this House prevents me from doing so and issues a mandamus to me which I will respectfully follow, I will continue to follow the dictates of my conscience. I have done my duty in the public interest.

...(Interruptions)

SHRI BASU DEB ACHARIA (BANKURA): He has not said anything.

श्री मोहन सिंह (देवरिया): सभापति महोदय, इसपर सफाई नहीं हुई।

... (व्यवधान)

श्री सत्य पाल जैन (चंडीगढ़): इसमें मेरी मांग है कि हाउस में इसपर डिस्कशन होना चाहिए। इस विषय पर हाउस में पूरा डिस्कशन हो चुका है कि जजों का एपाइंटमेंट कैसे हो, जजों का ट्रांसफर कैसे हो। यह बहुत गम्भीर मामला है।

... (व्यवधान)

सभापति महोदय : एक साथ कई माननीय सदस्य बोलेंगे तो हम कौन सी चीज पर निर्णय देंगे?

... (व्यवधान)

SHRI V. DHANANJAYA KUMAR (MANGALORE): I have a point of order.

श्री मोहन सिंह : सभापति जी, हमारी बात सुन लीजिए। जो प्रश्न उपस्थित किया गया था, माननीय मंत्री जी ने उसकी सफाई नहीं दी। प्रश्न यह उपस्थित किया गया था कि क्या कोई मंत्री यह वक्तव्य दे सकता है कि जो विषय कैबिनेट के विचाराधीन है यानि कुछ जजों की नियुक्ति का मामला कैबिनेट के विचाराधीन है, उसके बारे में एक मंत्री विशेष ने सार्वजनिक बयान दिया कि मुख्य न्यायाधीन भारत ने जजों की नियुक्ति के बारे में जो संस्तुतियां की हैं, उनमें से कुछ ५-६ चेहरे हैं, इसलिए सरकार फैसला नहीं कर पा रही है।

सभापति महोदय : उनका पॉ

श्री मोहन सिंह : और इस वक्तव्य को प्रधान मंत्री जी

... (व्यवधान)

ने गलत सिद्ध किया और कहा कि सरकार इससे अपने को एसोसिएट नहीं करती है। प्रश्न यह उपस्थित था कि क्या मंत्री और प्रधान मंत्री एक विषय पर दो वक्त व्य दे सकते हैं।

... (व्यवधान)

सभापति महोदय : शान्ति। कृपा कर आसन ग्रहण करें।

श्री मोहन सिंह : इस सदन के सामने या सरकार के सामने

... (व्यवधान)

मंत्री जी ने इसका उत्तर नहीं दिया।

सभापति महोदय : उनका पॉ

SHRI V. DHANANJAYA KUMAR: My point of order is, it has been the practice in this House that after a statement is made by the hon. Minister, no discussion can take place on that.

श्री मोहन सिंह : जीरो ऑवर के लिए नहीं है, यह जीरो ऑवर का मामला है।

श्री वी. धनंजय कुमार : जीरो ऑवर हो, कोई हो,

After the statement is made by the hon. Minister, there will not be any further discussion on that in this House.

श्री मोहन सिंह : यह सुओ मोटो स्टेटमेंट नहीं है। सभापति महोदय, यह जीरो ऑवर का मामला है।

सभापति महोदय : सुन लीजिए न। उन्होंने जो सवाल उठाया, उसके ऊपर हम कुछ निर्णय देंगे।

... (व्यवधान)

सभापति महोदय : शान्ति। उनका पॉ ... (व्यवधान)

श्री वी. धनंजय कुमार : मेरा आपसे निवेदन है, हाउस के अन्दर यह नियम रहा है, आप इसका समाधान कीजिए।

... (व्यवधान)

सभापति महोदय : शान्ति। उनका सुन लीजिए न। उनका पॉ ... (व्यवधान)

श्री मोहन सिंह : यह जीरो ऑवर का रिएक्शन है, यह स्टेटमेंट नहीं है।

सभापति महोदय : कई माननीय सदस्यों द्वारा शून्य काल में सवाल उठाया गया था, उसपर उस समय संसदीय कार्य मंत्री जी ने सदन को आश्वस्त किया था कि इस पर माननीय मंत्री श्री जेठमलानी जी अपना व्यक्तिगत स्पष्टीकरण रखेंगे, अपना व्यक्तिगत पक्ष रखेंगे। इस पर माननीय मंत्री ने (व्यवधान)

श्री बसुदेव आचार्य : यह आश्वासन उस समय नहीं था।

सभापति महोदय : क्या था?

श्री बसुदेव आचार्य : हम लोगों ने सवाल उठाया, फिर उन्होंने आश्वासन दिया।

सभापति महोदय : नहीं था। माननीय मंत्री ने कहा था, उस पर माननीय मंत्री जी ने आकर रैस्पोंड किया। माननीय सदस्यों ने जो सवाल उठाया था, उसके सम्बन्ध में उन्होंने रैस्पोंड किया, व्यक्तिगत स्पष्टीकरण दिया और इस पर बहस बढ़ाने की गुंजाइश नहीं है।

... (व्यवधान)

श्री मोहन सिंह : जो सवाल उठा था, उसका स्पष्टीकरण नहीं दिया। क्या स्टेच्यूट ऑफ इंडिया के निर्णय के बारे में कोई मंत्री वक्तव्य कर सकते हैं, यह प्रश्न था। ... (व्यवधान)

श्री राजेन्द्र अग्निहोत्री (झांसी): आपने जो व्यवस्था दी है, उसका ये पालन क्यों नहीं कर रहे हैं?

... (व्यवधान)

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श्री बसुदेव आचार्य : सवाल जजों के एपाइंटमेंट का था और उनका चीफ जस्टिस के खिलाफ उनका जो बयान था

... (व्यवधान)

उसके ऊपर कुछ नहीं बोला गया। जिस बात को लेकर आज विवाद खड़ा हुआ है ... (व्यवधान)प्राइम मिनिस्टर आफिस ने भी

... (व्यवधान)

The Prime Minister's Office has distanced itself from the statement made by the Minister of Urban Affairs and Employment. He has not clarified the point relating to the Chief Justice of the Supreme Court. (Interruptions)

उसके ऊपर कोई सफाई नहीं दी।

सभापति महोदय : आपको सुन लिया, अब आप बैठ जाइए।

SHRI BASU DEB ACHARIA : Our demand is also for the appointment of a National Judicial Commission. Let a National Judicial Commission be constituted.

सभापति महोदयः कृपया आसन ग्रहण करें, इसकी कोई सीमा नहीं है।

">SHRI SATYA PAL JAIN : I want to draw your attention towards rule 352 which talks about discussion on judicial matters. The hon. Minister has made it very clear that somebody has filed a petition in the Supreme Court. The rule says and I quote:

"A member while speaking shall not refer to any matter of fact on which a judicial decision is pending."

This matter has gone to the Supreme Court. I agree with my colleagues that this issue is a serious issue.

सभापति महोदयः इसमें सपोर्ट करने की जरूरत नहीं है।

SHRI SATYA PAL JAIN : The issue of appointment, transfer and impeachment of judges is a serious issue. (Interruptions) Let this House discuss this rising above party considerations. This is a very serious issue. We do

not want to interfere with the judicial appointments. But the way the judges are also behaving, it becomes a very serious matter. Let us discuss this whole issue. We cannot discuss this matter at the moment. (Interruptions)

श्री प्रभुनाथ सिंह (महाराजगंज): सभापति जी, मैं यह कहना चाहता था कि माननीय मंत्री जी ने तो अपनी सफाई दी, लेकिन जो बात सामने है, वह काफी महत्वपूर्ण है। हम माननीय सदस्यों के विचार से सहमत हैं कि जजों की बहाली, ट्रांसफर और पोस्टिंग आदि के मामले जो आए दिन सामने आते हैं, उस पर सदन में ि वशेषरूप से बहस होनी चाहिए और सदस्यों की भावना जानकर उसके अनुरूप कार्यवाही भी होनी चाहिए।

सभापति महोदयः ठीक है, आपकी बात हो गई। माननीय मंत्री जी अब बिल मूव कीजिए।

">SHRI KONIJETI ROSAIAH (NARASARAOPET): Sir, I have a small point to make. I want to seek a clarification on the statement.

सभापति महोदयः स्टेटमेंट नहीं था, पर्सनल एक्सप्लेनेशन पर रिसपॉड किया था।

SHRI KONIJETI ROSAIAH: I am not on a point of order but kindly allow me to seek one clarification from the hon. Minister. Shri Ram Jethmalani has now confirmed what has appeared in the Press. (Interruptions)

सभापति महोदयः आपने अपनी राय रख दी, कृपया अब आसन ग्रहण करें।

SHRI KONIJETI ROSAIAH : Sir, you will have to protect our rights.

He has confirmed what he has said in the Press earlier. That is contrary to the law existing today. As a Minister, if he wants to influence his own Government, this is not the method. He cannot influence his Government through the Press, public meetings and seminars. He has got the right to argue his case within the Cabinet.

THE MINISTER OF URBAN AFFAIRS AND EMPLOYMENT (SHRI RAM JETHMALANI): This is a matter between me and the Prime Minister, not you.

श्री लालू प्रसाद (मधेपुरा): महोदय, माननीय राम जेठमलानी जी ने..

श्री वी. धनंजय कुमार : अब लालू जी खड़े हो गए हैं, ऐसे कैसे चलेगा। इस पर आपकी व्यवस्था होनी चाहिए।

सभापति महोदयः लेकिन आप भी तो खड़े हो गए हैं, कृपया शांति रखें।

श्री लालू प्रसाद : माननीय राम जेठमलानी जी का पहले एक बयान आया और अब दूसरा बयाना आया। इनके बयान का खंडन केन्द्र सरकार दोनों स्तर पर कर चुकी है। लेकिन कभी-कभी इनके बयान देने में या किसी इनसान को बयान देने में क्या सेंसर किया जा सकता है या रोका जा सकता है? कल एक अवसर पर माननीय जेठमलानी जी बोल चुके हैं कि मेरी कोई पार्टी नहीं है।

THE MINISTER OF URBAN AFFAIRS AND EMPLOYMENT (SHRI RAM JETHMALANI): Sir, I do not want to have the last word on it.

_____ *Expunged as ordered by the chair.